In The

Supreme Court of the United States

October Term, 1953

No. 337

UNITED STATES OF AMERICA,

Petitioner,

vs.

ELIZABETH C. MORRELL,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland, in favor of Respondent (R. 7-16), is reported in 107 F. Supp. 658, and the opinion of the United States Court of Appeals for the Fourth Circuit, affirming the Judgment in favor of the Respondent (R. 18-24) is reported in 204 F. 2d 490.

QUESTION INVOLVED

Is the Petitioner obligated to apply or set off refundable premiums due deceased insured, against premiums it claims to be due by insured, to prevent lapse or forfeiture of National Service Life Insurance policy?

STATEMENT

This cause now comes before this Court on a Petition by the United States of America for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the Judgment rendered by the District Court in favor of the Respondent, Elizabeth C. Morrell, whereby the proceeds of a certain National Service Life Insurance Policy were awarded to said Respondent.

The insured, Captain Raymond C. Morrell, now deceased, designated the Respondent, his wife, as beneficiary of said insurance policy, and his minor son, Raymond C. Morrell, Jr., as contingent beneficiary. Upon the death of the insured on May 16th, 1947, Respondent duly filed her application with the Veterans' Administration on July 21st, 1947, for payment of the proceeds of said policy.

After four and one-half years, the Respondent was finally notified on November 29th, 1951, by an Appeal Board of the Veterans' Administration, that said Board posthumously determined, as authorized by law so to do,[1] that Raymond C. Morrell had been disabled from October 2nd, 1945, to January 17th, 1947, fifteen and one-half months, and was entitled to waiver of premiums on said policy from November 1st, 1945, to February 1st, 1947. The Board further found that the insured had paid premiums on the policy

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[1] 38 U. S. C. 802 (n) provides: "* * * *And provided further,* That in the event of death of the insured without filing application for waiver, the beneficiary, within one year after the death of the insured or the enactment of this amendment, whichever be the later, or, if the beneficiary be insane or a minor, within one year after removal of such legal disability, may file application for waiver with evidence of the insured's right to waiver under this section. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof."

from the date of its issuance,[2] to and through May 31, 1946, which included about seven months of the period of total disability when premiums were not legally due and chargeable to the insured. These premiums had been credited to his account, but never refunded, and are held by the Government to this date. The Board further found that inasmuch as the veteran reentered active duty on January 17th, 1947, his disability was held to have terminated as of that date and it therefore became necessary that premiums be paid subsequent to that date. The Government claimed no payments were made for the months of February, March and April of 1947, and therefore held that the policy lapsed on February 1st, 1947, three months prior to the insured's death.

Notwithstanding the fact that premiums had been thus paid during at least seven months of that period of disability, when the same were waived, as aforesaid, and notwithstanding the fact that said premiums had been credited to the insured's account and never refunded, the Government declined to set off said premiums in its possession against those premiums which it claimed to be due for the three months of February, March and April of 1947, and thus declared the policy had lapsed.

The Petitioner admits insured was to have reverted to an inactive status because of physical disability at the end of his terminal leave on April 30th, 1946, and while on such leave, he was admitted to the Regional Hospital at Fort George G. Meade, Maryland, on April 29th, 1946, and after further hospitalization and extensions of his terminal leave, finally reverted to an inactive status *because of physical disability* on October 1st, 1946. The insured was *recalled*

[2] Policy issued September 1, 1944.

to active duty on January 17th, 1947, and served at Fort Monmouth, New Jersey, until his death on May 16th, 1947.

At the time the insured expected to be separated from the Army on April 30th, 1946, and hence thereafter would not be entitled to further pay from the Army, he apparently instructed them to discontinue deductions for an allotment to cover insurance premium payments, such being part of the formality of being so separated. The Government admits that they received no instructions from the insured to cancel or discontinue his insurance, nor did they receive any instructions from him to make a refund of the aforesaid overpaid premiums. The insured was never notified that his policy had allegedly lapsed, but on the contrary, was notified by the Veterans' Administration by postcard, dated September 10th, 1946, more than four months after he had made his last premium payment, that they were transferring his National Service Life Insurance Account to their regional office at Richmond, Virginia.

Although Respondent maintains that certain facts which were the subject of a Joint Stipulation (R. 6) are irrelevant in this case, and were so found to be by the Courts below, the same pertaining to the marital and multiple-marital status of the insured and his wife, a brief resume thereof follows:

Without any knowledge of his wife, Elizabeth C. Morrell, whom he had married on August 11th, 1931, and while the insured was living with her and their young son in Baltimore, Maryland, in notorious tranquility, the insured surreptitiously applied for and was granted a divorce on March 29th, 1946, at Richmond, Virginia, on grounds of desertion.

On May 25, 1946, the insured married one Mary Swann on a sojourn to South Carolina. However, the insured con-

tinued to live with his wife, Elizabeth C. Morrell and their son in Baltimore, until his reactivation in the Army in Januray, 1947, without indication to the Respondent of his litigious activities at Richmond and his other marital encumbrances. The insured died as aforesaid, on May 16th, 1947, and thereupon discovering the fraud which had been practiced upon her, the Respondent filed a Petition in the Circuit Court of Baltimore City for annulment of the divorce decree, which the insured had obtained at Richmond. After proof of all of the foregoing facts, the Baltimore Court, on July 5th, 1949, declared the Virginia decree void on grounds of fraud by the insured practised (1) upon the Respondent in that she had never deserted him, nor been notified of such suit, and (2) upon the Virginia Court, in that the insured had never been a bona fide resident of Virginia. By virtue of this Baltimore decree the marriage of the insured to Mary Swann, was held void and the Respondent was declared to be the lawful widow of the insured. This decree was consented to by Mary Swann and her counsel.

The Veterans' Administrator did not conclude in his decision that there was any implied intent of the insured, by reason of the aforegoing facts, to require a cancellation of the policy. Obviously such an implication would be pure speculation and neither an administrative official nor a Court may indulge in such speculation. In fact, the Administrator held that the policy was revived by reason of the premium waiver posthumously found to be due, but the policy allegedly lapsed on February 1, 1947, when disability was said to have terminated. The Petitioner now injects that thought into this case, even though it was not argued on Appeal and even though the District Court properly dismissed any such contention and stated that it

boasted of nothing but speculation (R. 15-16). If there be any speculation, the law requires that it be in favor of the continuance of the insurance, rather than a forfeiture thereof.[3]

It is an historic rule of evidence that no one may speculate as to the intentions of a decedent with respect to a contract. The soundness of the rule is obvious.

REASONS FOR DENYING THE WRIT

I.

National Service Life Insurance Act provides that decisions of the Circuit Courts of Appeal shall be final.

38 *U. S. C. A.* sec. 445 — *Actions or claims; jurisdiction; parties; procedure, limitation; witnesses; definitions,* provides as follows:

> "In the event of disagreement as to claims, including claims for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the District Court of the United States for the District of Columbia or in the District Court of the United States in and for the District in which such persons or anyone of them resides, and jurisdiction is hereby conferred upon such Courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 762 and 763 of Title 28 and section 765 of Title 28 so far as applicable * * * The Circuit Courts of Appeal and the United States Court of Appeals for the District of Columbia shall respectively exercise appellate jurisdiction and, except as provided in sections 346 and 347

[3] Magruder v. United States, 32 F. 2d 807, 810, cited with approval by Veterans' Administrator in his opinion No. 902.

of Title 28, *the decrees of the Circuit Courts of Appeal and the United States Court of Appeals for the District of Columbia shall be final.*" (Emphasis supplied.)

The obvious intent of the Congress was to make the Circuit Courts of Appeal the final resting place for adjudications of claims on Government insurance policies. It is contrary to the provision of the Insurance Act to have prolonged litigation. The claim of the Respondent has been pending for almost six and one-half years, and it is unreasonable and unjust to further protract the same.

II.

Decision of the Court below is not in conflict with that of any other circuit, or in conflict with applicable decisions of this Court.

The Petitioner fails to cite a single case from any other Circuit Court of Appeals which is in conflict with the decision of the Court of Appeals for the Fourth Circuit in this case, nor have we been able to find such conflicting decisions. On the contrary, the decisions in several Courts of Appeals cases, cases in the District Courts, and cases before this Court, as well as decisions of the Veterans' Administrator himself, adequately support the findings of the Court below.[4]

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[4] Mikell v. United States, 64 F. 2d 301, (C. C. A. 4); Magruder v. United States, 32 F. 2d 807, (D. C. D. Idaho, S. D.); Kontovich v. United States, 99 F. 2d 661, (C. A. 6); Marie F. Levitch v. United States, No. 2605-47, (D. C. D. C.), not appealed and insurance paid; George Eddy v. United States, No. 1921, (W. D. Wisc.); United States v. Zazove, 334 U. S. 602; White v. United States, 270 U. S. 175-180; Thomas v. United States, 189 F. 2d 494, (C. A. 6, 1951), certiorari denied 342 U. S. 850; Baker v. United States, 94 F. Supp. 350, (D. C. Utah, 1950), reversed on other grounds 191 F. 2d 1004, (C. A. 10); Scott v. United States, 189 F. 2d 863, (C. A. 5); Administrator's Decisions No. 745 dated May 20, 1945, No. 794 dated October 4, 1948, No. 902 dated April 15, 1952, and opinion of the solicitor of the V. A. No. 416 dated August 23, 1950.

In an effort to show such a conflict of decisions, the Petitioner cites the cases of *Parker v. Veterans' Administration of the United States,* 193 F. 2d 149 (C. A. 5), and *Jones v. United States,* 189 F. 2d 601 (C. A. 8). These cases involved the application of dividends, declared by the Veterans' Administrator years after the death of the insured, to the payment of premiums due by the insured. The question of dividends is not analogous since such dividends not only were non-existent during the lives of the insured, but the statute and regulations specifically provides that dividends shall be paid in cash only and should not be available to pay premiums.[5] There is no such statutory provision or administrative regulation with respect to premiums paid during a period of disability, when the same may become posthumously waived. It is clear that the Veterans' Administrator is not required to declare a dividend until he has determined the sufficiency of the insurance fund, from time to time. It is elementary that a dividend is not due until declared. On the other hand, the statute places a duty on the Administrator to determine the question of waiver of premiums and the premium status of the policy, upon application of the beneficiary after the insured's death. There is no discretion in the Administrator as to whether or not he will make this decision, whereas there is discretion in him respecting the matter of dividends.

It is strange indeed that the Government continues to argue (P. Br. 15) that there has been a consistent admin-

[5] 38 C. F. R., 1949 Ed. sec. 8.26a provides: "Any special National Service Life Insurance dividend that *may* be declared *shall* be paid in cash only. Such special dividend shall not be available to pay premiums." An earlier regulation, 38 C. F. R. 1949 Ed. sec. 8.26 had provided that dividend accumulations and unpaid dividends should not be available for the payment of insurance premiums, except at the written request of the insured, made before default in payment of premiums.

istrative practice that the refundable premiums are not to be used to pay premiums owed after the termination of disability or death of the insured, without the assent of the insured. The only published opinions of the Administrator dealing with this question fail to support the Petitioner's contention.[6]

The Petitioner now attempts to confuse the issue by bringing before this Court a maze of superficial figures, not in evidence and not a matter of public record, and which were compiled since the decision of the Court below, whereby the Government would have it appear that there were thousands of these cases before the Veterans' Administrator every week. We earnestly object to the introduction of any such matter at this stage of the proceeding. Assuming, however, in arguendo, that there was even a scintilla of accuracy or relevancy to the fancy figures now hurriedly compiled by the Petitioner, after more than six years since this case first came to its attention, we submit that it would prove nothing but dire neglect on the part of the Administrator. If there was such an alleged volume of cases, involving the question in the case at bar, we feel certain the Petitioner would not have administered this statute for more than thirteen years without the guidance of a Court decision. We further submit that the question of posthumously applying premiums paid during disability, when the same have become waived, to the payment of premiums alleged to be due, is one of the most infrequent situations in the administration of the statute. The Administrator has heretofore seen fit to rely on the previous Court decisions on this point in his administration of the Act.[7]

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[6] Administrator's Decisions Nos. 745, 794 and 902, supra.

[7] Mikell v. United States, 64 F. 2d 301 (C. C. A. 4); Marie F. Levitch v. United States, No. 2605-47 (D. C. D. C.) not appealed

The Court below, in construing Section 602 (n) of the Statute, applied the specific criteria set out by this Court in the case of United States v. Zazove, 334 U. S. 602-610, where it was said (R. 24):

> "The statutory provisions, where ambiguous, are to be construed liberally to effectuate the beneficial purposes that Congress had in mind. In this respect, judicial construction of the Statute may appear similar to construction of a commercial policy, where ambiguous provisions are generally construed in favor of the insured. * * *".

We believe it is clear that the Writ applied for may not be granted on the basis that the decision of the Court below is in conflict with that of any other Circuit, or with the decisions of this Court.

III.

There is no important question of Federal law here involved which has not been heretofore settled by this Court.

The Supreme Court of the United States has reviewed the National Service Life Insurance Act and its antecedent statute known as the War Risk Insurance Act on numerous occasions, and has ably stated how the same shall be construed. By way of guidance in the construction of the subject statute, this Court stated in the case of United States v. Zazove, 334 U. S. 602:

> "Moreover, whatever ambiguity exists in the language of Section 602 (h) (2) is dispelled by a consideration of the practice in effect under United States

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by the Government, and the overpaid premiums posthumously applied to premiums due whereby policy was paid in full; George Eddy v. United States, No. 1921, (W. D. Wisc.). See also Administrator's Opinions, supra.

Government Life Insurance, established for World War I veterans and the *long established practice of commercial insurance companies*, viewed as part of the background of experience which the draftsman of Section 602 (h) (2) may be assumed to have had in mind." (Emphasis supplied.)

In view of the decision in the Zazove case, supra, and in other cases heretofore considered by this Court covering the subject statute, it seems to us that there is no occasion, nor any question of Federal law now involved which has not heretofore been considered by this Court.

The Veterans' Administrator has heretofore been entirely satisfied with the opinions of his own Solicitor,[8] which opinions support the Respondent's case. He did not see fit to pursue appeals in two District Court cases[9] which involved the identical situation presented here. It was only the decision of the Administrator in the case at bar which was conceived in arbitrariness.

IV.

Application of doctrine of forfeiture applies to Government as insurance carrier, as well as to private insurance companies.

The universal principle, applicable to forfeiture of insurance in a private insurance company,[10] is applicable to National Service Life Insurance issued by the United States.

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[8] Administrator's and Solicitor's Opinions Nos. 902 and 416-50.

[9] Marie F. Levitch v. United States, (D. C. D. C.), and George Eddy v. United States, No. 1921, (W. D. Wisc.).

[10] Lamar v. Aetna Life Insurance Co., 85 F. 2d 141 (C. A. 10); American National Insurance Co. v. Yee Lim Shee, 104 F. 2d 688 (C. A. 8); Long v. Monarch Accident Insurance Co., 30 F. 2d 929 (C. A. 4).

This rule was adopted by the Court of Appeals for the Fourth Circuit at least as early as the year 1933 in the case of Mikell v. United State, 64 F. 2d 301. In the Mikell case the beneficiary of the Government insurance policy there involved was seeking to have salary due by the Government to the deceased insured applied against premiums due by the insured. The Court stated that when the Government goes into the business of insurance, it is permissible to apply to it the rules applicable to insurance companies, so far as transactions relating to insurance are concerned, but no further. The Court, however, very properly refused to apply salary due to the deceased against premiums due by him, salary being in no way connected with the insurance contract. See quotation from the Mikell case in Opinion of the Court below (R. 23).

It is curious to note that the Administrator of Veterans' Affairs and his Solicitor, favorably adopted the decision of the Court in the Mikell case, supra in Administrator's Decision No. 902 dated April 15, 1952,[11] in passing upon two

[11] Two cases are involved in this decision. X had continuous active service from January 29, 1943, to August 30, 1949. During his first enlistment in the Army he was issued $10,000 National Service Life Insurance, effective February 1, 1943. He paid premiums by allotment. He was discharged from the Army on January 3, 1946, and his allotment was discontinued. On January 4, 1946, he enlisted in the Air Force. He failed to register an allotment so that the insurance which had been issued to him during his service in the Army lapsed for non-payment of premium due February 1, 1946. While in the Air Force, on April 29, 1946, the insured remitted $13 to pay two monthly premiums. This remittance having been made after the grace period was not applied to premiums. The Veterans' Administration did not know at the time that the insured was in active service. In fact, his case file does not show any correspondence in connection with his insurance. He was discharged from his second enlistment on August 19, 1946, reenlisted the next day, and was placed on active duty August 20, 1946. On August 23, 1946, he applied for $10,000 National Service Life Insurance which was issued effective the same day under N-20 291 151. He made an allotment to pay the premiums

claims there before them. The two cases dealt with in Administrator's Decision 902, supra, were similar to the case at bar. After the Government's Solicitor quoted the language of the Court in the Mikell case, he made the following observations and conclusions:

> "It will be observed that the rule has no application if the debt of the Government arose out of transactions not connected with insurance. But when the Government *becomes indebted to the insured in relation to insurance matters, the application of the rule is justified because when the Government goes into the in-*

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in advance. He was finally discharged August 30, 1949. Premium deductions were made from his pay through August 31, 1949, which continued his insurance in force through October 22, 1949. On the date of his death, December 29, 1949, the Veterans' Administration held in its possession the said premium credit item of $13 which, if applied to premiums due on October 23, 1949, and November 23, 1949, with a shortage of 20¢ would continue the insurance in force through December 23, 1949, with a grace period of 31 days thereafter. Since the insured died within the grace period, the insurance would be payable if the premium credit item may be applied.

Y was issued $10,000 National Service Life Insurance effective February 8, 1943, under N-9 478 899. He executed an allotment for the payment of premiums in advance and under this allotment deductions were made to pay the premiums, including the premium due May 8, 1943. On April 29, 1943, the Veterans' Administration received a notice that Y, who was an aviation student, would be placed on duty requiring regular and frequent participation in aerial flights for the period of May 1, 1943, to May 31, 1943. Upon receipt of this notice, the prior insurance contract was discontinued and $10,000 National Service Life Insurance was issued to him as an aviation student under N-6 268 822. The Government paid the premium for the month of May 1943. Consequently, the amount deducted from his service pay for the premium due May 8, 1943, was not needed and the amount thereof, $6.60, was placed to his credit. Upon termination of his participation in flights on May 31, 1943, the insured stated that he did not wish to continue his aviation student insurance. He died in service on July 22, 1943. The amount held to his credit was applied to the premium due on June 1, 1943, and since his death occurred during the grace period, insurance was awarded to the beneficiary in 1944. The premium due for the grace month was deducted from the initial payment. * * *

surance business it is permissible to apply the same rules applicable to insurance companies insofar as insurance functions are concerned. It must be kept in mind, however, that the rule itself does not require or even permit the application to the continuance of insurance of money which the insured has directed be used for another specific purpose * * *". (Emphasis supplied.)

Here we have the Government itself contending exactly what the Respondent here contends and what the Courts below concluded in this case. It is therefore difficult to understand the Government's inconsistent position. As the Petitioner well knows, the Courts will not allow an administrative official to indulge in caprice and arbitrariness.

In the aforesaid Administrator's Decision 902, the specific question concerned the use of premium credit on one insurance contract to prevent lapse of another insurance contract. In each case the insured had died and the determination by the Administrator was made posthumously. In this decision it was said at p. 4:

> "* * * The fact that he did not request a refund of unused premiums previously submitted is at least consistent with the view that he expected and desired a continuance of insurance protection so long as money previously tendered would permit. It is pertinent to note in this connection what was said by the Court in the case of Magruder v. United States, 32 F. 2d 807, 810, (D. C. C. Idaho, S. D., 1929):
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> > '* * * the rule recognized by the Courts (is) that the cancellation of an insurance contract must be absolute and in clear language. No presumption should be dealt in when determining whether a contract of insurance was canceled, and if there should be any ambiguity as to whether an instrument constitutes a cancellation it should be construed most strongly against the party seeking a forfeiture.' "

The Government's Administrator then goes on to hold:

> "HELD: A premium credit item held to the account of an insured on the date of lapse of the insurance, sufficient in amount to prevent lapse, may be so used, even though the credit resulted in connection with another insurance contract, unless the insured has directed that the credit is to be used for another purpose. Such direction may be found in the provisions of the insurance contract, either express or necessarily implied in a communication by the insured to the Veterans' Administration, or in any manner in which the intention of the insured is manifested. Having applied such principles to the two cases set forth in this decision, it is concluded that the insurance is payable in each case (Opinion of the Solicitor, dated January 2, 1952, approved March 24, 1952. XC-9 286 224, XC-3 273 145).
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> "This decision is hereby promulgated for observance by all officers and employees of the Veterans' Administration."

The above quoted decision of the Administrator goes much further than the Respondent sought to go in this case. There it was found proper and within the scope of section 802 (n) to apply premiums paid on one insurance policy to another policy in order to prevent a forfeiture or lapse thereof. Here Respondent has merely sought to have premiums paid on the insurance policy sued upon, applied to that policy (not to another) in order to prevent a lapse.

In the case of Kontovich v. United States, 99 F. 2d 661, (C. A. 6), the Court held:

> "* * * such Government contracts are to be construed by the same rules as like contracts involving private parties and the jurisdiction conferred on the Courts to administer such contracts must be exercised in accordance with the laws governing the usual procedure of the Courts in actions for money compensation."

Again in the unreported case of Marie F. Levitch v. United States, decided by the District Court for the District of Columbia, January 29, 1948, and not appealed by the Government, wherein the facts are essentially the same as those in the case at bar, it was said:

> "(The Court) The motion is granted for the following reasons: It appears from the admitted facts in this case that for a certain period prior to his death the insured was totally disabled and was entitled to waiver of premiums on the policy, pursuant to the United States Code, Title 38, section 802, subsection N. However, the premiums were paid for that period.
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> "Under the foregoing section of the statute either the insured's beneficiary was entitled to a refund of the premiums so paid — actually no refund was made and the Government still retains the money. Subsequently total disability of the assured, from which the waiver of premiums was predicated, ceased. If the premiums that should have been refunded but have not been refunded, were applied to the premiums during the last mentioned period, the policy would have been alive at the time of the death of the insured, and the beneficiary would be entitled to recovery.
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> "The Court holds that the Government was under an obligation to do one of two things, either make the refund or else apply the money in its hands to the premium on the policy. It could not just hold the money and make no application of it in the absence of any instructions to that effect. Even if the Government did not wish to apply the money, it should have tendered a refund. It seems to the Court that the Government is under an obligation to the same extent to which a private insurance company would be under similar circumstances, otherwise the Government insurance would be of doubtful value.
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> "The Court feels that not merely as a matter of law, but also as a matter of equity, since the Government has money in its hands belonging to the insured, it was

under a duty to apply that money as against any obligation due the Government from the insured, in this case the premium."

The Petitioner completely disregards the fact that the statute expressly gives the beneficiary the right to make application for waiver of premiums after the insured's death. If the argument of the Petitioner was sound then that part of the statute giving the beneficiary the right to do what the insured could have done during his life would be a nullity. This would be a form of statutory repeal by administrative edict. We submit that the Administrator has no such legislative power.

The Congress gave this right to the beneficiary knowing full well that the same involved a posthumous determination of this question of waiver, and the disposition of overpaid premiums.

The Petitioner knows full well that the decisions in the Levitch case, supra, as well as in the cases in Administrator's Decision No. 902, supra, all involved posthumous determinations and in those cases there was no application filed by the insured for waiver during his lifetime and no other directive from the insured.

V.

The applicable statute creating National Service Life Insurance shall be liberally construed in favor of insured.

The aforesaid Sec. 802 (n) of the statute, together with certain other sections thereof, was amended by the Act of 1946. The Bill in Congress calling for the amendment of the National Service Life Insurance Act was referred to the Senate Committee on Finance, and that Committee

in its report, which report may be found in the U. S. Code Congressional Service, 1946, at p. 1394, stated the purpose of the Bill as follows:

> "The purpose of the Bill is to liberalize certain provisions of the National Service Life Insurance Act to overcome certain deficiencies and inadequacies in existing law which will be hereafter explained."

It is doubted that anyone would seriously contend that the Congress which passed the subject Insurance Act was motivated by any other desire or intention than to aid the men and women in the armed services and their dependents, and to help alleviate some of the hardships resulting from their military service. It is ironical that the Government which so generously came to the assistance of the armed forces in this matter of life insurance, as it did in many other special benefits, now contends that it was not as liberal as advertised.

The Courts have uniformly adopted a liberal construction of the National Service Life Insurance Act, in favor of the insured.[12]

Section 802 (n) of the statute is in two distinct parts. It distinguishes between the rights and duties of the *insured*, and the rights and duties of the *beneficiary*, with respect to the question of waiver of premiums. This analysis of the section was made in the case of Baker v. United States, supra (n. p. 7) where it was said:

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[12] McDonald v. United States, (D. C. Mass.), 1950, 91 F. Supp. 163; Thomas v. United States, (C. A. 6th), 1951, 189 F. 2d 494, certiorari denied 72 S. Ct. 78, 342 U. S. 850; Gamez v. United States, (D. C. Texas), 1951, 95 F. Supp. 656; Richards v. United States, (D. C. W. Va.), 1950, 93 F. Supp. 208; Lewis v. United States, (C. C. W. Va.), 1952, 105 F. Supp. 33; Golden v. United States, (D. C. Ala.), 1950, 91 F. Supp. 950; United States v. Zazove, 334 U. S. 602; White v. United States, 270 U. S. 175.

"The whole of the section (802n) through the third proviso is concerned with the application of the *insured* (for waiver). The fourth proviso is concerned with the application of the *beneficiary.*"

"The whole section is intended to be beneficial to the veteran. Everything Congress does here is to help him. They let him go back to five years prior to August 1, 1946 in the first proviso. In the second proviso they give him a year after August 1, 1946. And in the third proviso they say if a man were in the March of Bataan, or locked up in a prison or in a war camp somewhere, or some condition existed which was beyond his control, and due to that condition he did not apply, he gets the benefit of that."

"All the way through they were trying to help him. And then finally they help him by saying, if you die, under the circumstances which I have indicated the beneficiary has a year more."

In the case of Kontovich v. United States, 99 F. 2d 661, (C. A. 6), the Court aptly expressed the spirit of Government Life Insurance and the manner in which the same will be construed, it was said:

"The War Risk Insurance Act was intended to afford the soldier the advantages of ordinary life and accident insurance, which were no longer reasonably available to him and being substitute insurance, such Government contracts are to be construed by the same rules as like contracts involving private parties and the jurisdiction conferred on the Courts to administer such contracts must be exercised in accordance with the laws governing the usual procedure of the Courts in actions for money compensation."

The Petitioner at times maintains that the one sentence in section 802 (n), "*Any premiums paid for months during which waiver is effective shall be refunded* * * *", taken

out of context, supports its contention in this case. It seeks to commit surgery upon the statute and sever this one magic sentence from the first part thereof dealing with the rights and duties of the insured, and to graft it on to another distinct part of the section pertaining to the beneficiary, for the purpose of its case.

It would be untenable to say that Congress intended to pass such a generous piece of legislation and give such broad powers to the Administrator thereof in every other respect, except one. Neither the Courts have nor the Administrator himself[13] has heretofore placed such a rigid construction on this section of the statute.

It is true that the beneficiary has no greater rights under this section than the insured had during his life, but we insist that the beneficiary has no less rights than the insured had.[14]

It is submitted that the Congress never intended to give the Government the right to stand by and wait until after an insured had died to make an election as to whether it should refund excess premiums or apply them on account of premiums due. Such would be contrary to every principle of simple justice and equity.

The Petitioner admitted in the Courts below that the overpaid premiums are now refundable. However, it strangely argues here for the first time (P. Br. 10) that *"the Veterans' Administration may not dispose of the credit in any way* * * *". Certainly the Petitioner is not serious for such would be an admission of confiscation of the pre-

[13] Administrator's Decision No. 902, April 15, 1952.

[14] Baker v. United States, 94 F. Supp. 350, 191 F. 2d 1004; Scott v. United States, 189 F. 2d 863; Levitch v. United States, (D. C. D. C.), unreported and not appealed by Government.

mium credit fund held in trust for the insured and his beneficiary.

The Government now contends, also for the first time (P. Br. 10), that to apply the premium credit to the payment of premiums due *"might render the Veterans' Administration liable for the refund in the event that the insured should thereafter determine against continuing the insurance."* We are wondering how the deceased insured in this case will return to this earth and hereafter determine against continuing the insurance. We submit that the doctrine of reincarnation does not apply in this case. The Petitioner is obviously confusing waiver claims made by the policyholder with those made by the beneficiary under the express terms of the statute.

CONCLUSION

It is respectfully submitted that there is no reason for granting a Writ of Certiorari in this case, and therefore the Writ should be denied.

Respectfully submitted,

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Attorney for Respondent.